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ABSTRACT

The complexities and realities of concession bargaining are discussed, and a case study for Monmouth College is presented. Concession bargaining is contract modification bargaining: certain benefits that resulted from the collective bargaining agreement are relinquished. Generally, management obtains concessions from the union. The employer seeking concessions has the obligation of having to show cause why changes are warranted. The most widely used concession models are: givebacks, buybacks, rollbacks, and takebacks. Because of financial difficulties and declining enrollment, Monmouth College proposed the elimination of 10 tenured faculty from low enrollment departments. The faculty voted to reject the proposed agreement and agreed to defer 1 percent of the additional 2 percent to be contributed by the administration to faculty pension plans. This sum amounted to about $50,000. The college agreed not to send notices of release to faculty during the academic year providing that a sufficient number of faculty took advantage of buyout provisions. Four alternatives to terminating tenured faculty were created: buyout of tenure, phased retirement, retraining, and administrative appointments. The case study includes remarks by Professor Philip A. Donahue, Provost Eugene J. Rosi, and Dean Richard Benjamin. (SW)

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IS CONCESSION BARGAINING A THREAT TO STABILITY IN HIGHER EDUCATION COLLECTIVE BARGAINING?

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NEWSLETTER
NATIONAL CENTER FOR THE STUDY OF COLLECTIVE BARGAINING IN HIGHER EDUCATION AND THE PROFESSIONS

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IS CONCESSION BARGAINING A THREAT TO STABILITY IN HIGHER EDUCATION COLLECTIVE BARGAINING?

INTRODUCTION

The term "Concession Bargaining" has entered the lexicon of academic collective bargaining and it has brought new problems to the process. Heretofore, benefits won at the negotiations table were thought to be irrevocable. The successor agreement might contain additional benefits and, if so, then these also would become memorialized in writing. Now with the advent of concession bargaining, the entire structure and substance of previous contracts become subject to revision as in numerous cases management presents demands to either reduce or withdraw benefits. Although not a new term, indeed concessions have been part of the bargaining process since the advent of negotiations, the term has taken on a new meaning within the structure of collective bargaining in higher education. At our Twelfth Annual Conference, we examined the question of concession bargaining as it existed at three institutions: Boston University, CUNY, and Monmouth College. The Monmouth experience, as described by Professor Philip A. Donahue, Chairman of the AAUP Chapter, generated a response from the administration of the college. Provost Eugene J. Rosi and Dean Richard Benjamin, the chief negotiator for the college, requested an opportunity to respond to Professor Donahue's remarks. Although Professor Donahue's speech will be reprinted in its entirety as part of the Proceedings of the Annual Conference, we have selected excerpts for use in this article, along with the responses from Messrs. Rosi and Benjamin. We hope that this exchange of ideas from faculty and administration at the same institution will serve as a means of illustrating both the complexities and realities of concession bargaining. In addition, further commentary on the topic is provided.

THE NATURE OF THE PROCESS

Concession bargaining may best be described as contract modification bargaining for the term implies relinquishing certain benefits that have previously been enjoyed by the signatories to the collective bargaining agreement. While concessions can be generated in either direction, experience has shown that the movement has generally been for management to obtain concessions from the union in areas that it once enjoyed. What makes this form of bargaining unique is the mindset the employer brings to the table. Instead of negotiating in a strict win-loss bargaining model, the employer has the added obligation of going forth and establishing the need for relief. This differs from the traditional compromise mode that is so often a part of traditional collective bargaining. In reality, the employer seeking concessions has the added obligation of having to show cause why such change is warranted.

While concession bargaining may involve the reopening of an existing contract, most cases appear to take the form of seeking concessions in the successor agreement. Obvious exceptions to this can be found: bankruptcy and merger are two examples. However, absent an extreme emergency situation, concessions are rarely obtained during the life of an existing agreement.

Once the decision to seek concessions has been made the question of strategy becomes paramount. The four most widely used concession models are: a) givebacks, b) buybacks, c) rollbacks, and d) takebacks.

In the giveback model, the charging party seeks concessions by appealing to his opponent claiming that it is in the best interest of both parties to resolve the issue short of confrontation. Appeal to reason, coupled with a win/win bargaining strategy is critical in this model.

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The buyback model involves one party, usually management, seeking to end a contractual commitment. Generally speaking these issues involve management controls and prerogatives and rarely impact on the economic process per se. If the old axiom that money is the least objectionable item to give away in the bargaining process is true, then the buyback model can work.

Erosion of past benefits best describes the rollback model. In this scenario, the employer, by either maintaining the status quo or eroding the value of the compensation package, achieves a certain rollback level. An example where this tactic has been used is in the negotiation of health care benefits whereby the employer guarantees a certain fixed percentage of the premium cost which translates into employees having to absorb a greater amount of the difference.

The takeback model is perhaps the most belligerent of all. In this win/lose model, either party announces the end of a certain benefit or term and refuses to continue it into the successor agreement. Stonewalling as a tactic can be utilized to achieve takebacks; however, it remains doubtful that the term concession bargaining can be used to describe this process.

WHY CONCEDE?

Professor Peter Cappelli of the University of Illinois, writing in the May 1984 issue of The Monthly Labor Review, describes what unions have been receiving in return for concessions. While his examples are drawn from the manufacturing sector, some analogies can be made to the broader topic. Cappelli maintains that unions who are concerned primarily with job security will make labor cost concessions in order to lower manufacturing costs. By doing this, the employer can more effectively compete in the economic marketplace while at the same time, improving job security. One would suppose that if economic competition were to be defined as tuition costs and if a faculty union was willing to reduce its salary structure in order to allow the college to more effectively compete for students, then the situation would be somewhat analagous.

Cappelli identifies five areas where unions have been receiving improvements in exchange for concessions. They are:

- job security
- implicit job security
- contingent compensation
- say in company decisions
- symbolic improvements

Several of these gains can be classified as either rollbacks or takebacks, however, the union is still left with the perception that through the bilateral bargaining process a decision was reached. Of the above list, it appears that job security and a say in company decisions are the most meaningful in terms of selling the package to union members. If job security and the ability to compete are the issues, then clearly the concepts discussed by Cappelli are worth noting.

IDENTIFYING THE CONCESSIONS

Michael Rosen, Associate General Counsel at Boston University, speaking at the Twelfth Annual Conference on "Concession Bargaining," argues that reason and rationality must be present to achieve concessions. He submits that:

> If the concession that is sought is so important that it will be obtained "at any cost," the cost may indeed be quite high. But if the concession is to preserve and strengthen the institution, there must be a willingness to demonstrate the following:
>
> 1. The concession is needed or justified for the continued "good health" of the institution.
> 2. The concession in fact will not hurt individual employees or that the loss to individual employees from the concession will be less than the greater dislocations that would be caused if the concession is not obtained.

Rosen's points are consistent with the need to ensure the financial health and competitive economic power of the institution. He further argues that assuming the concession is not designed to ". . . weaken the other side's role, but is to establish or reestablish a rule, a wage scale, a workload or system which is necessary for the health of the enterprise." While no one formula exists that will enable the parties to diagnose their problems, clearly a selling job must be done to bring the adversarial party into the concession arena. This is not meant in a negative sense but merely emphasizes the win-win bargaining process at the expense of the more traditional win-lose model.

Rosen identifies the concession areas. While some may impact unit-wide, others may have a more limited reach.

> . . . The nature of the concession may determine whether it should be achieved through a unit-wide trade, through a buy-out, or simply as a contribution by the Union to the continued health of the institution.
>
> One group of concessions involves specialized benefits, rules, practices, rates of pay, or other items which

affect only a portion of the bargaining unit. The second group of concessions involves those items which affect or potentially affect each member of the unit or which affect the unit as a whole but no individual members. To put it another way, an item which affects the Union, not the unit. A classic example of this would be a reduction in force to be achieved through attrition. Such a plan in theory affects no individual employee; yet the consequence of the plan will be to reduce the size of the bargaining unit, and thus the strength of the union.

One value of analyzing who is affected by the proposed changes can be to permit selective implementation. The "buy out" of a costly benefit may be offered for the entire bargaining unit. It can also be offered in such a way that it is targeted to those who are directly affected. Similarly, management can offer or the union can seek to have differentials: one group can be grandfathered, but new employees do not get the benefit of the old rule or old schedule. The job or wage rate may be red circled so that incumbents retain it, but there is acknowledgement that there will be no additions to the list of persons on that schedule or rate.

Rosen's speech, which will be reprinted in its entirety in the Proceedings, suggests numerous ways and classifications by which concessions, primarily in the area of personnel cost containment can be achieved.

MONMOUTH COLLEGE CASE STUDY

Monmouth College, located in Long Branch, New Jersey, was first organized in 1971 by the NEA. The AAUP obtained bargaining rights in 1978 and currently represents the bargaining unit of some 130 faculty. Set forth below are excerpts from Professor Donahue's speech and the remarks of Dean Benjamin and Provost Rosi describing the negotiations for the 1983-85 contract.

The Faculty Perspective

"Little did most Monmouth faculty realize that they were on the threshold of what has come to be known as concession bargaining." Professor Donahue proceeded to describe the financial crises perceived by the college's administration which led them to the conclusion that tenured faculty would have to be terminated. Discussions centered around the possibility that as many as thirty-six tenured faculty would be let go over the next five years. Furthermore, the problem of recruiting and retaining junior faculty became virtually impossible. Donahue continued by describing the administration's attack on tenure while at the same time his perception of the college's economic priorities.

> . . . Strangely enough, in spite of impending economic doom, the college administration was spending large amounts of money. Monmouth College entered Division I basketball competition. Neither the Physical Education faculty nor the larger faculty were asked to advise in any significant way on this important step. Outside consultants appeared on campus at considerable cost, to make recommendations on such matters as the advisability of establishing a prep school on the Monmouth campus, curriculum change and space utilization. New administrators materialized seemingly out of nowhere and, in the opinion of many faculty, created more problems than they solved.

With this background in place, the collective bargaining process began.

> . . . The union had drawn up its proposals with great care in rationally justifying its case. The college administration team, in that kind of scenario, seldom, if ever, had its own set of proposals. It generally reacted, almost defensively, to union proposals, making concessions depending on its perception of the mood of the faculty as the opening of the fall semester drew near. This administration, however, had already sent clear signals that it intended to behave differently.

If indeed the college sought concessions from the faculty, then the burden rested with them to justify their demands. This was especially true if the relief sought involved the proposed termination of tenured faculty for reasons related to financial exigency. Donahue comments:

> . . . The evidence was confusing. While the college budget showed deficits for several of the preceding years, its IRS returns, which were procured with some difficulty, showed increases in net worth for each of the deficit years. Clearly, it was necessary to prove that the discretionary powers of management in spending money and in allocating it among several funds at will enabled them to put the worst face on things if it was to their advantage to do so.

Negotiations began. Among the demands that the college proposed was the elimination of ten tenured faculty from low enrollment departments.

> . . . They justified their proposal on a clause in the contract which provided for termination in departments which were financially exigent. Since none of the departments in question were financially exigent at the time of the administration's proposal, and were only projected to become so in an uncertain future, the college administration was on rather shaky legal ground. But, legality aside, the proposal was a threatening one since no tenured faculty position had ever been terminated in the history of the college.

An issue for the union negotiating team revolved around the exercise of leverage through the use of the strike weapon. While no strike vote had been authorized, the issue loomed in the background. Since the bargaining was conducted during the summer months, it was difficult to gain a sense of the faculty's collective view on the strike and the layoff issue. The institution continued to maintain that its financial health was poor and that tenured faculty must go.

A tentative agreement was reached which provided for a four and a half percent raise plus an increase of two percent to the retirement fund. No tenured faculty were to be let go, however, an attractive buyout plan was made available to those faculty in the low enrollment departments. The choice was clear. Failure to accept this proposal would probably have meant layoffs of tenured faculty.

> . . . Some members of the union negotiating team, although they agreed to recommend the settlement, had serious reservations. If present economic conditions did not justify such harsh measures, wasn't the union, in effect, colluding with the administration in its plans? On the other hand, the proposed agreement was the best that could be reached short of direct faculty action. The team agreed to present the proposed settlement to the membership without enthusiastic endorsement.

After much debate, the faculty, by a vote of 43 to 35, rejected the proposed agreement; a week later a strike authorization vote was obtained. Clearly negotiations had reached a new critical point. The bargaining process continued in a new spirit of conciliation. A second agreement was reached, accepted and approved.

> . . . The final agreement which emerged over the next month could be characterized as an example of concession bargaining only in the most limited sense. The union agreed to defer one percent of the additional two percent to be contributed by the administration to faculty pension plans until June 30, 1984, the end of the contractual year. This sum, which amounted to about $50,000, was to be placed in a joint escrow fund. If, by the end of the contractual year, five tenured faculty in departments where their positions would not be replaced had not agreed to the tenure buyout plan, the one percent would return to the college's general fund. From the point of view of the union, the worst that could happen was the loss of $50,000, a rather small concession for the saving of tenured faculty positions. In early November, the membership overwhelmingly accepted the new agreement.

The union viewed the impasse as a win; jobs were saved and union membership increased. Furthermore, the only measurable losses in the process were those suffered by the administration. Faculty mistrust of administration increased with greater polarization present.

Professor Donahue summarized by stating:

> . . . Administrative policy proposals for change are evaluated by many faculty at least as much on the basis of the source as on their merit. In short, the college administration has become ineffective in providing leadership for the institution. Given the kind of short run future most private colleges face, this is a most serious handicap. Sadly, it could have been different.

The Administration's Perspective

As expected, the same fact pattern as viewed by the administration presents a somewhat different version than the one described by the union. Dean Richard Benjamin, the chief negotiator for the college and Provost Eugene J. Rosi characterize the paper by Professor Donahue as a "tendentious document which exults in a union 'victory' on a campus and in the press." According to the management spokespersons, neither side won a victory at Monmouth. In support of their position, they prepared written comments on Donahue's paper.

The college's chief concern as it went into the negotiations process was actual and projected enrollment decline in an institution that was ninety percent dependent on tuition. Furthermore, seventy-five percent of the faculty were tenured with half of the departments being one hundred percent tenured. As in many institutions, there was a shortage of faculty in Computer Science, Business Administration and Electronic Engineering.

> . . . The basic issues which kept recurring in the negotiations were the financial health of the College, the uncontestable fact of serious enrollment declines and projected further declines in several academic areas, and the manner in which possible retrenchment could be accomplished.

Since financial health appears to have been a major issue, the college shared complete financial information with the Faculty Association. Meetings were scheduled with the college's auditing firm to discuss accounting procedures and to reach some consensus on the fund balance.

> . . . In light of future uncertainties, the administration was reluctant to deplete the College's small reserves; it sought to plan for possible decline while it strove to prevent decline—at least the worst case—from occurring.

The 1982-83 Collective Bargaining Agreement mandated a twenty-month prior notification period to tenured faculty being retrenched. Since the union refused to shorten the notification period to one year, the college had no choice but to initiate layoff notices. It must be noted that the national AAUP accepts a one-year notification period while the local union did not.

Throughout the negotiations process the administration notified the union that ". . . every attempt would be made to turn around the enrollment trends and to work out reasonable tenure buyouts, retraining arrangements, and possible adminisrative appointments."

The tone of the administration's response to Professor Donahue's paper suggests a schism between the union negotiating team and the rank and file faculty.

> . . . The reasonableness of the administration's alternatives was acknowledged by the regional representative of the AAUP who attended some of the negotiations. Even members of the FAMCO negotiating team acknowledged that the administration had developed "creative" proposals in seeking to resolve the issue.

The administration does not see a win-loss bargaining situation but perhaps a win-win, since both parties share the concerns about the future of the college. The new contract stated:

> The College and the Association declare(d) their mutual concern over recent and projected enrollemnt (sic) figures which portend both a delcine (sic) in total enrollment and a shift among programmatic offerings.

As part of this compromised spirit, the college further agreed not to send notices of release during the 1983-84 academic year providing that a sufficient number of faculty took advantage of the buyout provisions. A contingency fund of $50,000 was created to assist the college in meeting its needs.

Four alternatives to the termination of tenured faculty were created. They included:

> 1. Buyout of tenure: a payment over three years of 235% of base salary, with provision for medical and dental insurance, tuition benefits, and opportunity for part-time teaching. This supplemented a plan that the administration had offered in 1982 that provided 200% of base salary beginning with 50-year old tenured faculty, and declining 5% per year of age thereafter.
>
> 2. Phased retirement.
>
> 3. Retraining: 80% of base salary for a year of retraining leave or half-time course reductions; plus a $1000 contribution to expenses and the possibility of a $2000 loan that would be forgiven.
>
> 4. Administrative appointments: the administration maintained that it would seek to find appropriate administrative positions for threatened faculty, a practice it had already followed in the past three years with three faculty who had not been granted tenure.

In the view of the administration:

> . . . the efforts of the entire College have resulted in an increase in

applications and deposits for the upcoming fall term. The hopes of both sides that the enrollment decline could be stemmed if not reversed may be fulfilled.

Thus in the eyes of the administration, the perceived union victory never occurred; instead a conciliatory approach was taken by both parties for the common good.

SUMMARY

Robert Burns once said that we all should have the ability to see ourselves as others see us. Such it was with the impasse at Monmouth. The union described a major victory, while the administration is pleased that their needs have been acknowledged. Both parties now appear to be striving towards a more common goal, i.e., enrollment management and the continued viability of the institution.

The union, while acknowledging that few if any concessions were made, did engage in a form of economic concession bargaining. They accepted a lesser rate of increase in their wage package with the hope that the institution might become more competitive. While this point is not made in Professor Donahue's speech, it appears that personnel cost containment was a major goal of the administration, a goal that was partially reached.

The four alternatives to the termination of tenured faculty presented a creative approach to a most difficult problem. While the first three, buyouts, phased retirements, and retraining are found in other collective agreements, the fourth, administrative appointments, appears unique. The appointment of three faculty from low enrollment departments to part-time administrative positions is a partial solution to both the economic and humane aspects of the problem.

The Monmouth College case study affords us the opportunity to be an observer, albeit a retrospective one, at a collective bargaining impasse. While we only have the participants' observations to guide us in our model, nevertheless sufficient information is presented to enable us to analyze certain tactics and strategies used. The first question to ask is to what extent was this an exercise in concession bargaining? The union submits that very little, if any, concessions were made while management saw the union's acceptance of a moderate wage rate and their conciliatory attitude as a concession towards solving the college's problem. Need givebacks be a part of the bargaining process for concession bargaining to occur or can the acceptance of a lower wage rate itself be classified as a concession?

The second question to be ascertained concerns the structural components of the bargaining process. Assuming arguendo the validity of the institution's problem, it is significant to note that collective bargaining proved to be a successful vehicle for its resolution. Clearly, the stability of the bargaining relationship survived this crisis and indeed may have been the most preferential forum the parties could have used to address both short- and long-term solutions.

Another question to be raised focuses on the types of concessions sought. Clearly, the administration sought relief in one of the most sacrosant areas, job security and tenure, in the employment relationship. The selection of this issue and its relationship to both the strike vote and initial contract rejection is tantamount to zero sum bargaining.

To a certain extent, it appears that a degree of hostility exists as a residue of the collective bargaining process. However, the conciliatory language in the collective agreement, as well as the compromised solutions suggest that this may be short lived. Labor management cooperation, although a bit scarred, came through the process relatively intact. Although public positions were taken with respect to the process, the ability of the parties to avoid a work stoppage and reach closure on these difficult issues must be viewed as constructive.

The next round of collective bargaining at Monmouth College will be interesting to observe. Will the union engage in concession bargaining or will it argue that whatever concessions were made, they were a one-time happening? Will the administration of the college seek additional concessions and if so, will they once again rely on the collective bargaining process to achieve them? Certainly, the financial health of the institution will, in part, provide an answer to these questions. In sum, Monmouth provides us with a case study in which various substantive and situational components of the collective bargaining process can be analyzed.

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